

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHAMROCK FOODS COMPANY

Petitioner,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

Case No. 18-1170

**NONBINDING STATEMENT OF ISSUES**

Pursuant to the Court's procedural order of June 25, 2018, the Petitioner, Shamrock Foods Company ("Shamrock"), sets forth its Nonbinding Statement of Issues that it may raise in this proceeding:

1. Whether the National Labor Relations Board ("the Board") erred by finding the Shamrock violated Section 8(a)(1) and/or (3) of the National Labor Relations Act ("the Act"), 29 U.S.C. §§ 158(a)(1), (3), in any of the respects alleged in the Complaint.

2. Whether the Board erred by finding that Shamrock violated Section 8(a)(1) of the Act, 29 U.S.C. §§ 158(a)(1) by: (i) threatening employees; (ii) soliciting employee complaints or grievances; (iii) instructing employees to ascertain and disclose the union activities of others; (iv) informing employees that supporting the Union would be futile; (v) promising employees a benefit in order to

discourage union support; (vi) surveilling employees and/or creating the impression of surveillance; (vii) promulgating an unlawful rule in response to union activity, instructing employees to report employees who violated that rule, and threatening employees with legal prosecution if they violated that rule; (viii) interrogating employees; (ix) confiscating and prohibiting the distribution of union literature; (x) granting a wage increase in order to discourage union support; and (xi) by discharging Thomas Wallace.

3. Whether the Board erred by finding that Shamrock violated Sections 8(a)(1) and (3) of the Act, 29 U.S.C. § 158(a)(1), (3), by disciplining Mario Lerma.

4. Whether the Board erred by finding that paragraphs 10, 12, and 13 of Thomas Wallace's separation agreement violated Section 8(a)(1) the Act, 29 U.S.C. § 158(a)(1).

5. Whether the Board erred in upholding the administrative law judge's determinations concerning supervisory status under Section 2(11) of the National Labor Relations Act, 29 U.S.C. § 152(11).

6. Whether the Board erred by affirming certain of the administrative law judge's credibility findings.

7. Whether the Board erred upholding sanctions against Shamrock, including precluding Shamrock from rebutting evidence, cross-examining

witnesses, and drawing adverse inferences against Shamrock related to a General Counsel subpoena *duces tecum*.

8. Whether the Board erred in upholding adverse inferences drawn against Shamrock.

9. Whether the Board erred in upholding the administrative law judge's denial of Shamrock's request for adverse inferences against Counsel for the General Counsel.

10. Whether the Board erred in upholding the administrative law judge's decision not to impose sanctions against the Bakery, Confectionary, Tobacco Workers' and Grain Millers International Union, Local Union No. 232 (the "Union") for its failure to comply with a valid subpoena *duces tecum*.

11. Whether Shamrock was denied due process in connection with subpoenaing records in possession of the Union.

12. Whether the Board's regulations governing subpoenas *duces tecum* deny respondents due process and/or equal protection of the law.

13. Whether the Board erred in departing from established precedent without explanation in finding that Shamrock committed violations of the Act.

14. Whether the Board erred by ordering Shamrock to compensate Thomas Wallace for search-for-work expenses and interim employment expenses.

15. Whether the Board erred by ordering Shamrock to mail a copy of the “Appendix” to all employees employed at its Phoenix, Arizona, facility at any time since January 28, 2015.

16. Whether the Board erred in ordering Shamrock to hold a meeting where its President/CEO or Operations Vice President would read the Appendix to employees or be present while a Board agent reads the Appendix to employees.

17. Whether the Board in erred in relying upon and/or upholding the administrative law judge’s factual conclusions.

18. Whether the Board in erred in relying upon and/or upholding the administrative law judge’s legal conclusions and/or recommendations.

19. Whether the Board’s decision and the underlying administrative law judge’s decision are unsupported by evidence, arbitrary, capricious, and/or manifestly contrary to statute.

20. Whether the Board erred in upholding the Administrative Law Judge’s determinations that were not cited in its opinion.

21. Whether the Board erred by disregarding the various errors committed by the Administrative Law Judge that are identified in Exhibit A attached hereto.

Dated: July 26, 2018

Respectfully submitted,

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Company

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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was served on the following via U.S.

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